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No. 86-672

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

TRANS WORLD AIRLINES, INC.,
Petitioner,

v.

RAMON ELISALDE,
Respondent.

On Petition For Writ Of Certiorari to the
United States Court Of Appeals for the Eighth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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Respondent respectfully suggests that the issue framed in the petitioner's application is also presented in *West v. Conrail, Inc.*, No. 85-1804, *Gallon v. Levin Metals*, No. 85-1839 and *Continental Baking v. Macon*, No. 85-1400. The petition has been granted in West and West is docketed for argument before this Court on February 25, 1987.

The petitioner's statement that the opinion of the Eighth Circuit in this case "...is contrary to Del Costello..." is incorrect (*Del Costello v. Teamsters*, 462 U.S. 151 [1983]). The Justices dissenting to the denial of a petition for a writ of certiorari in *Simon v. Kroger Co.*, 105 S.Ct. 2155 (1985) stated:

> "We did not discuss (in Del Costello) whether that section's (§10(b) N.I.R.A.) requirement of service, as well as filing, within the 6-month period also applies in such a suit."

Further, it is undisputed, and noteworthy, that the respondent (plaintiff) both filed his action and undertook to obtain service on the petitioner(s) (defendants) within the six month statutory period.

In summary, the imposition of the service of process requirement, in a civil action for the breach of the duty of fair representation, into the six month limitation period prescribed by 29 U.S.C. §160(b), is in the nature of judicial overkill of the plaintiff in this type of action. Simple justice requires that this Court find that the duty of fair representation plaintiff be held to the same timeliness requirement as the NLRB charging party, *i.e.*, merely to file and mail his Complaint and Summons within the six month limitation period.

CONCLUSION

The respondent assumes that this petition for certiorari will be adjudicated by this Court's disposition of *West v. Conrail*, No. 85-104 (Argument docket, February 25, 1987). The respondent is confident that this Court's disposition will allow this respondent to proceed with his long awaited day in Court as ordered by the Eighth Circuit Court of Appeals.

Respectfully submitted,

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January 23, 1987